

**NONRENEWAL OF PROVISIONAL LICENSED EMPLOYEES**  
**UTAH CODE SECTION 53A-8-104**

- I. As a matter of constitutional law, a nontenured (Utah uses the term “provisional”) employee is not entitled to any procedural protections. Utah law: Utah Code §53A-8-104(4):
  - A. “A district shall notify a provisional employee at least 60 days before the end of the provisional employee’s contract if the employee will not be offered a contract for a subsequent term of employment.”
  - B. If a district intends to terminate a provisional employee’s contract *during the contract’s term*, the employee is entitled to timely notice, detailed reasons and the right to a fair hearing.
- II. Procedures applicable to nontenured (provisional) employees generally require that notice of the termination or nonrenewal be given to the employee by a certain time prior to the end of the contract term. No other process is due. No appeal rights are afforded. This is the case even where the decision is arguably:
  - A. Arbitrary
  - B. Based on insubstantial reasons
  - C. Made in bad faith
  - D. Unsupported by the facts or
  - E. Simply for no reason at all.

**Note: Must NOT be for a constitutionally impermissible (discriminatory) purpose, e.g. “She’s too old.” “We need a non-Mormon/more women on the faculty.” “ We never hire women to coach.”**

- III. State laws or board policies MAY create hearing or even appeal rights for provisional employees. Some classes of employees may be entitled to notice or hearing rights; others have no rights.
- IV. In the absence of express statutory requirements, boards are appropriately resistant to formalizing hearing rights. **Should the issue arise again (and again and again), it may be argued that due process was provided once—and has established an expectation.**
- V. Nonrenewal decisions are invalidated for certain frequent deficiencies. Some of the most common procedural problems—must be evaluated together with state law and district policies:
  - ☐ Failure to properly approve or authorize nonrenewal—if state law (or district policy) requires local board authorization or vote for nonrenewal, courts will also require.

- ☐ Failure to give timely notice or notice in the manner prescribed by law (Utah: “A district shall notify a provisional employee at least 60 days before the end of the provisional employee’s contract if the employee will not be offered a contract for a subsequent term of employment.” (“Days” should be defined in local policy as “business days,” “calendar days,” “school days,” etc.—or local policy can set a date [March 1] that would clearly satisfy statute)
- ☐ Failure to place the employee on probation for unsatisfactory performance, where such a requirement exists in state law or district policy.
- ☐ **Failure to properly evaluate the employee. (Utah law requires: (1) “the evaluation of provisional and probationary educators at least twice each school year;” and (2) . . . the principal or immediate supervisor of a provisional educator shall assign a person who has received training or will receive training in mentoring educators as a mentor to the provisional educator.” Utah Code §§ 53A-10-102.5 and 108)**
- ☐ Failure to comply with statutory or contractual requirements. (Illinois state law did not require teacher evaluation before dismissal of a ‘nontenured’ teacher, but law required written notice and reasons for dismissal—court said collective bargaining agreements may place procedural limitations on a school board’s ability to dismiss a teacher so long as those limitations do not infringe on the board’s statutory authority)

## VI. Notice of Nonrenewal

- A. Usually expressly regulated by statute—which must be substantially followed if a dismissal is to be valid and effective.
- B. Sometimes courts have allowed less than formal notice; usually notice must be formal and in writing.
- C. Where no notice form is specified, any language in a timely written notice which fairly and reasonably informs the teacher that the district does not intend to renew the contract for the next year is sufficient. *Where additional requirements are prescribed by local board policy, they should be followed as well.*
- D. Checklist of notice requirements:
  - ☐ Notice should be in writing.
  - ☐ Notice should be properly addressed and directed to the employee.
  - ☐ Notice should be properly headed (e.g. Notice of Nonrenewal) or otherwise be clear as to the impact of the notice.

- Notice should clearly state that employment from the *position* held or any other position, employment or duty with the educational institution is being terminated. (Sometimes this is strictly construed by the courts. For instance, a principal serving in the capacity of middle school principal without a written contract but who held a written contract as a senior high school assistant principal was deemed reemployed as a middle school principal where notice did not refer to a specific contract and the board nonrenewed his senior high assistant principal contract.)
- The notice should not make any promises or assurances of re-employment contingent upon finances or other matters.
- The notice should be considered only after receiving any administrative recommendation and supporting evaluations or documentation.
- The notice should be signed by the appropriate official or officials of the educational institution.
- Notice should be timely delivered to the employee in the manner prescribed by law or board policy.

**Superintendents Association Professional Development  
Employment (etc.) Issues**

**Carol Lear, November 2, 2009**